

Internal Revenue Service

Number: **200805011**

Release Date: 2/1/2008

Index Number: 355.01-00, 368.08-08,
351.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:B04
PLR-132682-07
Date:
October 30, 2007

LEGEND:

Distributing 1 =

Distributing 2 =

Controlled 1 LLC =

Controlled 1 =

Controlled 2 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Partnership =

Holdings 1 =

Holdings 2 =

Business A =

Business B =

Business C =

Asset X =

Asset Y =

Asset Z =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to your July 16, 2007 request for rulings on certain federal income tax consequences of a series of proposed and partially completed transactions. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether Internal Distribution 1, External Distribution 1, Internal Distribution 2 and External Distribution 2 (each defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are being used principally as a device for the distribution of earnings and profits of any distributing or controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the "Code") and § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in any distributing or controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing 2 is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the "Distributing 2 Group"). Distributing 2 wholly owns Distributing 1 and Sub 2. Distributing 1 directly operates Business A. Distributing 1 wholly owns Sub 7, Controlled 2, and all of the interests in Controlled 1 LLC, an entity disregarded as separate from its owner for U.S. federal income tax purposes under § 301.7701-3 (a "disregarded entity").

Distributing 1 operates Business B through Controlled 1 LLC and the numerous subsidiaries and partnerships through which Controlled 1 LLC engages in Business B. Controlled 1 LLC wholly owns Sub 1 and owns all of the common interests in Partnership (which for state law purposes is a limited liability company). Sub 1 owns all of the preferred interests in Partnership.

Controlled 2 is a holding company for the Business C operations of the Distributing 2 Group. Controlled 2 wholly owns Holdings 1, Sub 5, and Sub 6. Controlled 2 owns all the common stock of Sub 3 and Distributing 2 owns all the preferred stock of Sub 3. Holdings 1 wholly owns Holdings 2. Sub 3 wholly owns Sub 4.

Financial information submitted by Distributing 2 indicates that Business A (through Distributing 1), Business B (through Sub 1), and Business C (through Controlled 2) each have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 2's management has determined that the separation of Business B and the separation of Business C from the Distributing 2 Group will serve a number of corporate business purposes including alleviating certain fit and focus problems which prevent the optimal development of each of the respective businesses.

Proposed Transaction

For what has been represented to be valid business purposes the following steps have been proposed or partially completed (the "Proposed Transaction"):

(i) Controlled 1 LLC will contribute its membership interests in Partnership to Sub 1, causing Partnership to become a disregarded entity, and Partnership will subsequently merge into Sub 1 under state law.

(ii) Sub 7 will merge under state law into Distributing 1 in a transaction intended to qualify as a liquidation under §§ 332 and 337.

(iii) Distributing 1 will contribute Asset X subject to certain liabilities to Controlled 1 LLC.

(iv) Controlled 1 LLC will contribute the property received in step (iii) above to Sub 1 (together with step (i), "Contribution 1").

(v) Sub 3 will sell (a) certain wholly owned ventures and other property to Sub 1 for cash and (b) the stock of Sub 4 to Distributing 1 for cash.

(vi) Sub 1 will obtain a line of credit from a third-party lender of approximately \$a. Sub 1 will borrow on this line of credit to repay approximately \$b of existing intercompany indebtedness owed to Distributing 1. If Sub 1 owes more than the amount repaid, Distributing 1 will contribute such excess amount to the capital of Sub 1.

(vii) Distributing 2 will contribute all of the stock of Sub 2 to Distributing 1 ("Contribution 2").

(viii) Controlled 1 LLC will convert from a limited liability company to a corporation under state law (the "Conversion").

(ix) Distributing 1 will form a new limited liability company ("New LLC") which will be treated as a disregarded entity.

(x) Distributing 1 will contribute Asset Y to New LLC.

(xi) Distributing 1 will contribute (a) certain land, (b) the membership interests in New LLC, (c) up to a 20% undivided interest in Asset Z and (d) other property associated with Business B to Controlled 1 ("Contribution 3").

(xii) Controlled 1 in turn will contribute the property received in step (xi) to Sub 1.

(xiii) Distributing 1 will distribute all of the stock of Controlled 1 to Distributing 2 ("Internal Distribution 1").

(xiv) Distributing 2 will distribute all of the stock of Controlled 1 pro rata to its shareholders ("External Distribution 1").

(xv) Sub 6 will merge under state law into Controlled 2 in a transaction intended to qualify as a complete liquidation under §§ 332 and 337.

(xvi) Distributing 1 will contribute (a) cash of up to \$c, (b) up to a 20% undivided interest in Asset Z, and (c) other property associated with Business C to Controlled 2 ("Contribution 4").

(xvii) Of the property received in step (xvi), Controlled 2 will contribute a portion of the cash and the undivided interest in Asset Z to Holdings 1, a portion of the cash to Sub 3, and a portion of the cash to Sub 5. Holdings 1 will in turn contribute the undivided interest in Asset Z and the cash it receives to Holdings 2.

(xviii) Distributing 1 will distribute all of the stock of Controlled 2 to Distributing 2 ("Internal Distribution 2," and together with Internal Distribution 1, the "Internal Distributions").

(xix) Distributing 2 will contribute its preferred stock in Sub 3 to Controlled 2 ("Contribution 5").

(xx) Distributing 2 will distribute all of the stock of Controlled 2 pro rata to its shareholders ("External Distribution 2," and together with External Distribution 1, the "External Distributions").

In connection with the Proposed Transaction, Distributing 2, Controlled 1 and Controlled 2 will indemnify each other with respect to certain securities law, tax, employment, and other matters (the "Separation Indemnification Arrangements"). In addition, under certain pre-existing agreements, Distributing 2 utilizes its line of credit with a third-party bank to have letters of credit issued with respect to Business B. Distributing 2 also provides guarantees on surety bonds issued by third-party insurance companies with respect to Business B ("Fiscal Assurances"). The governmental jurisdictions that require these letters of credit and surety bonds may not allow them to be replaced by Controlled 1's letters of credit and guarantees on surety bonds prior to External Distribution 1. Accordingly, for up to one year after the External Distributions, Distributing 2 may continue to provide letters of credit and guarantees related to Business B. The total amount of surety bonds presently outstanding is less than \$d, and the total letters of credit outstanding is less than \$e.

In connection with the Proposed Transaction, Distributing 2, Controlled 1, and Controlled 2 will enter into agreements for transitional services ("Transitional Services") for a period not expected to exceed f years following the effective time of the Spin-offs (the "Transition Period"). The Transitional Services may be compensated on a cost basis during the Transition Period but will be compensated on an arm's length basis if the service period is extended. Distributing 1, Sub 1, and Holdings 2 will also enter into an agreement in which they share costs associated with operating Asset Z in which they will each hold undivided interests following the External Distributions ("Asset Z Agreement"). Under the terms of the agreement, Sub 1 and Holdings 2 will pay up to 20 percent of the fixed costs associated with ownership of their respective undivided interests in Asset Z and will pay a portion of the variable costs of operation based on usage. The agreement has a f year term at which time it can be renewed or terminated. If any party does not renew the agreement, it will be compensated by the remaining owner(s) or a third-party for the fair value of its interests in Asset Z.

Following the External Distributions, it is expected that one current director and officer of Distributing 2 will serve as a director of both Controlled 1 and Controlled 2 but will resign as a director and officer of Distributing 2. It is also expected that one current director of Distributing 2 will continue to serve as a director of Distributing 2 and will also serve as one of the g directors of Controlled 1. Two other current directors of Distributing 2 will continue to serve as directors of Distributing 2 and will also serve as two of the g directors of Controlled 2. No director will serve on all of the boards of Distributing 2, Controlled 1, and Controlled 2.

In addition, Distributing 2, Controlled 1, and Controlled 2 will enter into agreements in regard to the separation of Business B and Business C that include a Tax Matters Agreement, a Separation and Distribution Agreement, and an Employee Matters Agreement.

Representations

The following representations are made with respect to Contribution 1:

(a1) No stock or securities of Sub 1 will be issued for services rendered to or for the benefit of Sub 1 in connection with Contribution 1, and no stock or securities will be issued for indebtedness of Sub 1 that is not evidenced by a security or for interest on indebtedness of Sub 1 which accrued on or after the beginning of the holding period of Distributing 1 for the debt.

(b1) Contribution 1 is not the result of the solicitation by a promoter, broker, or investment house.

(c1) Distributing 1 (through Controlled 1 LLC) will not retain any rights in the property transferred to Sub 1.

(d1) The value of the stock received in exchange for accounts receivable will be equal to the net value of the accounts transferred.

(e1) The adjusted basis and the fair market value of the assets to be transferred by Distributing 1 (through Controlled 1 LLC) to Sub 1 will be equal to or exceed the sum of the liabilities to be assumed by Sub 1 (within the meaning of § 357(d)).

(f1) The liabilities to be assumed by Sub 1 (within the meaning of § 357(d)) were incurred in the ordinary course of business and are associated with the assets to be transferred.

(g1) Except for indebtedness incurred in the ordinary course of business (including the indebtedness between Distributing 1 and Sub 1 described in step (vi)),

there is no indebtedness between Distributing 1 and Sub 1, and there will be no indebtedness created in favor of Distributing 1 as a result of Contribution 1.

(h1) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(i1) There is no plan or intention on the part of Sub 1 to redeem or otherwise reacquire any stock or indebtedness to be issued in Contribution 1.

(j1) Except for the Conversion, taking into account any issuance of additional shares of Sub 1 stock; any issuance of stock for services; the exercise of any Sub 1 stock rights, warrants, or subscriptions; a public offering of Sub 1 stock; and the sale, exchange, transfer by gift, or other dispositions of any of Sub 1's stock received by Distributing 1 (through Controlled 1 LLC), Distributing 1 (through Controlled 1 LLC) will be in "control" of Sub 1 within the meaning of § 368(c).

(k1) Distributing 1 (through Controlled 1 LLC) will be deemed to receive stock in Sub 1 approximately equal to the fair market value of the property transferred to Sub 1.

(l1) Sub 1 will remain in existence and retain and use the property transferred to it in a trade or business.

(m1) There is no plan or intention by Sub 1 to dispose of the transferred property other than in the normal course of business operations.

(n1) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with Contribution 1.

(o1) Sub 1 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(p1) Distributing 1 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of Distributing 1.

(q1) Sub 1 will not be a "personal service corporation" within the meaning of § 269A.

(r1) The combined fair market value of the assets to be transferred by Distributing 1 (through Controlled 1 LLC) to Sub 1 will equal or exceed the sum of the basis of such assets. § 362(e)(2).

The following representations are made with respect to Contribution 2:

(a2) No stock or securities of Distributing 1 will be issued for services rendered to or for the benefit of Distributing 1 in connection with Contribution 2, and no stock or

securities will be issued for indebtedness of Distributing 1 that is not evidenced by a security or for interest on indebtedness of Distributing 1 which accrued on or after the beginning of the holding period of Distributing 2 for the debt.

(b2) Contribution 2 is not the result of the solicitation by a promoter, broker, or investment house.

(c2) Distributing 2 will not retain any rights in the property transferred to Distributing 1.

(d2) The value of the stock received in exchange for accounts receivable will be equal to the net value of the accounts transferred.

(e2) Any debt relating to the stock being transferred that is being assumed (or to which such stock is subject) was incurred to acquire such stock and was incurred when such stock was acquired, and Distributing 2 is transferring all of the stock for which the acquisition indebtedness being assumed (or to which such stock is subject) was incurred.

(f2) The adjusted basis and the fair market value of the assets to be transferred by Distributing 2 to Distributing 1 will be equal to or exceed the sum of the liabilities to be assumed by Distributing 1 (within the meaning of § 357(d)).

(g2) The liabilities of Distributing 2 to be assumed by Distributing 1 (within the meaning of § 357(d)) were incurred in the ordinary course of business and are associated with the assets to be transferred.

(h2) Except for indebtedness incurred in the ordinary course of business, there is no indebtedness between Distributing 2 and Distributing 1, and there will be no indebtedness created in favor of Distributing 2 as a result of Contribution 2.

(i2) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(j2) All exchanges in connection with Contribution 2 will occur on approximately the same date.

(k2) There is no plan or intention on the part of Distributing 1 to redeem or otherwise reacquire any stock or indebtedness to be issued in Contribution 2.

(l2) Taking into account any issuance of additional shares of Distributing 1 stock; any issuance of stock for services; the exercise of any Distributing 1 stock rights, warrants, or subscriptions; a public offering of Distributing 1 stock; and the sale, exchange, transfer by gift, or other dispositions of any of Distributing 1's stock to be

received by Distributing 2, Distributing 2 will be in “control” of Distributing 1 within the meaning of § 368(c).

(m2) Distributing 2 will be deemed to receive stock in Distributing 1 approximately equal to the fair market value of the property transferred to Distributing 1.

(n2) Distributing 1 will remain in existence and retain and use the property transferred to it in a trade or business.

(o2) There is no plan or intention by Distributing 1 to dispose of the transferred property other than in the normal course of business operations.

(p2) Each of the parties to the transaction will pay its own expenses, if any, incurred in connection with Contribution 2.

(q2) Distributing 1 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(r2) Distributing 2 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock deemed received in the exchange will not be used to satisfy the indebtedness of Distributing 2.

(s2) Distributing 1 will not be a “personal service corporation” within the meaning of § 269A.

(t2) The combined fair market value of the assets to be transferred by Distributing 2 to Distributing 1 will equal or exceed the sum of the basis of such assets. § 362(e)(2).

The following representations are made in connection with the Conversion, Contribution 3, and Internal Distribution 1:

(a3) The indebtedness, if any, owed by Controlled 1 to Distributing 1 after Internal Distribution 1 will not constitute stock or securities.

(b3) No part of the consideration to be distributed by Distributing 1 in Internal Distribution 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(c3) The five years of financial information submitted on behalf of Distributing 1 is representative of its present operations, and with regard to Distributing 1, there have been no substantial operational changes since the date of the last financial statements submitted.

(d3) The five years of financial information submitted on behalf of Controlled 1 through its separate affiliated group ("SAG") (through Sub 1) is representative of its present operations, and with regard to Sub 1, there have been no substantial operational changes since the date of the last financial statements submitted.

(e3) Following Internal Distribution 1, Distributing 1 and the Controlled 1 SAG will each continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(f3) Internal Distribution 1 is carried out for the corporate business purpose of facilitating External Distribution 1, the corporate business purposes of which include alleviating certain fit and focus problems that currently obstruct the optimal development and operation of both Business A and Business B. Internal Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(g3) Internal Distribution 1 is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

(h3) The total fair market value of the assets transferred by Distributing 1 to Controlled 1 in the Conversion and Contribution 3 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of the cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.

(i3) The total adjusted basis and the fair market value of the assets transferred to Controlled 1 by Distributing 1 in the Conversion and Contribution 3 each will equal or exceed the sum of any liabilities assumed within the meaning of § 357(d).

(j3) The liabilities assumed by Controlled 1 in the Conversion and Contribution 3 and the liabilities to which the transferred assets are subject, if any, were incurred in the ordinary course of business and are associated with the assets being transferred.

(k3) No intercorporate debt will exist between Distributing 1 and Controlled 1 at the time of, or subsequent to, Internal Distribution 1, except for any indebtedness incurred in the ordinary course of business or pursuant to the Transitional Services, Asset Z Agreement, Fiscal Assurances, or the Separation Indemnification Arrangements.

(l3) Immediately before Internal Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations (see § 1.1502-13 and § 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(m3) Except for payments made in connection with Transitional Services during the Transition Period and the Asset Z Agreement, payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled 1 (or controlled subsidiaries of each), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(n3) For purposes of § 355(d), immediately after Internal Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1.

(o3) For purposes of § 355(d), immediately after Internal Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled 1 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1 or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 1.

(p3) Internal Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).

(q3) No two parties to Internal Distribution 1 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r3) Immediately after Internal Distribution 1, either (1) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction; or (2) Controlled 1 and

Distributing 1 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

The following representations are made in connection with External Distribution 1:

(a4) The indebtedness, if any, owed by Controlled 1 to Distributing 2 after External Distribution 1 will not constitute stock or securities.

(b4) No part of the consideration to be distributed by Distributing 2 in External Distribution 1 will be received by a Distributing 2 shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(c4) The five years of financial information submitted on behalf of the Distributing 2 SAG (through Distributing 1) is representative of its present operations, and with regard to Distributing 2 SAG, there have been no substantial operational changes since the date of the last financial statements submitted.

(d4) The five years of financial information submitted on behalf of the Controlled 1 SAG is representative of its present operations, and with regard to Controlled 1 SAG, there have been no substantial operational changes since the date of the last financial statements submitted.

(e4) Following External Distribution 1, the Distributing 2 SAG and the Controlled 1 SAG will each continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(f4) External Distribution 1 is carried out for the corporate business purpose of: alleviating certain fit and focus problems that currently obstruct the optimal development and operation of both Business A and Business B. External Distribution 1 is motivated, in whole or substantial part, by this corporate business purpose.

(g4) External Distribution 1 is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 1 or both.

(h4) No intercorporate debt will exist between Distributing 2 and Controlled 1 at the time of, or subsequent to, External Distribution 1, except for any indebtedness incurred in the ordinary course of business or pursuant to the Transitional Services, Separation Indemnification Arrangements, or the Fiscal Assurances.

(i4) Immediately before External Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 2's excess loss account

with respect to the stock of Controlled 1, if any, will be included in income immediately before External Distribution 1 (see § 1.1502-19).

(j4) Except for payments made for Transitional Services during the Transition Period, payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled 1 (or controlled subsidiaries of each), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(k4) For purposes of § 355(d), immediately after External Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of External Distribution 1.

(l4) For purposes of § 355(d), immediately after External Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled 1 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of External Distribution 1 or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of External Distribution 1.

(m4) External Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 1 (including any predecessor or successor of any such corporation).

(n4) The payment of cash in lieu of fractional shares of Controlled 1, if any, is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. The method used for handling fractional shares is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled 1. The total amount of cash paid in lieu of fractional shares will not exceed one percent of the fair market value of Controlled 1 shares distributed to the shareholders in External Distribution 1.

(o4) Immediately after External Distribution 1, either (1) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Controlled 1 or Distributing 2; (2) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in

any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction; or (3) Controlled 1 and Distributing 2 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

The following representations are made in connection with Contribution 4 and Internal Distribution 2:

(a5) The indebtedness, if any, owed by Controlled 2 to Distributing 1 after Internal Distribution 2 will not constitute stock or securities.

(b5) No part of the consideration to be distributed by Distributing 1 in Internal Distribution 2 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(c5) The five years of financial information submitted on behalf of Distributing 1 is representative of its present operations, and with regard to Distributing 1, there have been no substantial operational changes since the date of the last financial statements submitted.

(d5) The five years of financial information submitted on behalf of the Controlled 2 SAG is representative of its present operations, and with regard thereto, there have been no substantial operational changes since the date of the last financial statements submitted.

(e5) Following Internal Distribution 2, Distributing 1 and the Controlled 2 SAG will each continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(f5) Internal Distribution 2 is carried out for the corporate business purpose of facilitating External Distribution 2, the corporate business purposes of which include alleviating certain fit and focus problems that currently obstruct the optimal development and operation of both Business A and Business C. Internal Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose.

(g5) Internal Distribution 2 is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 2 or both.

(h5) The total fair market value of the assets transferred by Distributing 1 to Controlled 2 in Contribution 4 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 2 by Distributing 1 that are discharged or extinguished in connection with the exchange, and (iii) the amount of the cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by

Distributing 1 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.

(i5) The total adjusted basis and the fair market value of the assets transferred by Distributing 1 to Controlled 2 in Contribution 4 each will equal or exceed the sum of any liabilities assumed within the meaning of § 357(d).

(j5) The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject, if any, were incurred in the ordinary course of business and are associated with the assets being transferred.

(k5) No intercorporate debt will exist between Distributing 1 and Controlled 2 at the time of, or subsequent to, Internal Distribution 2, except for any indebtedness incurred in the ordinary course or pursuant to the Transitional Services, Asset Z Agreement, or the Separation Indemnification Arrangements.

(l5) Immediately before Internal Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations (see § 1.1502-13 and § 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

(m5) Except for payments made for Transitional Services during the Transition Period and the Asset Z Agreement, all payments made in connection with all continuing transactions, if any, between Distributing 1 and Controlled 2 (or controlled subsidiaries of each), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(n5) For purposes of § 355(d), immediately after Internal Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2.

(o5) For purposes of § 355(d), immediately after Internal Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled 2 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2 or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Internal Distribution 2.

(p5) Internal Distribution 2 is not part of a plan or series of related transactions (within the meaning of §1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 2 (including any predecessor or successor of any such corporation).

(q5) No two parties to Internal Distribution 2 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r5) Immediately after Internal Distribution 2, either (1) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction; or (2) Controlled 2 and Distributing 1 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

The following representations are made in connection with Contribution 5 and External Distribution 2:

(a6) The indebtedness, if any, owed by Controlled 2 to Distributing 2 after External Distribution 2 will not constitute stock or securities.

(b6) No part of the consideration to be distributed by Distributing 2 in External Distribution 2 will be received by a Distributing 2 shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(c6) The five years of financial information submitted on behalf of the Distributing 2 SAG is representative of its present operations, and with regard to the Distributing 2 SAG, there have been no substantial operational changes since the date of the last financial statements submitted.

(d6) The five years of financial information submitted on behalf of the Controlled 2 SAG is representative of its present operations, and with regard to the Controlled 2 SAG, there have been no substantial operational changes since the date of the last financial statements submitted.

(e6) Following External Distribution 2, the Distributing 2 SAG and the Controlled 2 SAG will each continue the active conduct of its business independently and with its separate employees or employees of the other members of its affiliated group.

(f6) External Distribution 2 is carried out for the following corporate business purposes: alleviating certain fit and focus problems that currently obstruct the optimal development and operation of both Business A and Business C. External Distribution 2 is motivated, in whole or substantial part, by this corporate business purpose.

(g6) External Distribution 2 is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.

(h6) The total fair market value of the assets transferred by Distributing 2 to Controlled 2 in Contribution 5 will exceed the sum of (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (b) the amount of any liabilities owed to Controlled 2 by Distributing 2 that are discharged or extinguished in connection with the exchange, and (c) the amount of the cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in connection with the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.

(i6) The total adjusted basis and the fair market value of the assets transferred by Distributing 2 to Controlled 2 in Contribution 5 each will equal or exceed the sum of any liabilities assumed within the meaning of § 357(d).

(j6) The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject, if any, were incurred in the ordinary course of business and are associated with the assets being transferred.

(k6) No intercorporate debt will exist between Distributing 2 and Controlled 2 at the time of, or subsequent to, External Distribution 2, except for any indebtedness incurred in the ordinary course or pursuant to the Transitional Services or Separation Indemnification Arrangements.

(l6) Immediately before External Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transactions regulations (see § 1.1502-13 and § 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 2's excess loss account with respect to the stock of Controlled 2, if any, will be included in income immediately before External Distribution 2 (see § 1.1502-19).

(m6) Except for payments made for Transitional Services during the Transition Period, payments made in connection with all continuing transactions, if any, between Distributing 2 and Controlled 2 (or controlled subsidiaries of each), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(n6) For purposes of § 355(d), immediately after External Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing 2 stock that was

acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of External Distribution 2.

(o6) For purposes of § 355(d), immediately after External Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote or 50 percent or more of the total value of shares of all classes of Controlled 2 stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of External Distribution 2 or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of External Distribution 2.

(p6) External Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).

(q6) No two parties to External Distribution 2 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r6) The payment of cash in lieu of fractional shares of Controlled 2, if any, is solely for the purpose of avoiding the expense and inconvenience of issuing fractional shares and does not represent separately bargained for consideration. The method used for handling fractional shares is designed to limit the amount of cash received by any one shareholder to less than the value of one full share of Controlled 2. The total amount of cash paid in lieu of fractional shares will not exceed one percent of the fair market value of Controlled 2 shares distributed to the shareholders in External Distribution 2.

(s6) Immediately after External Distribution 2, either (1) no person will hold a 50% or greater interest (within the meaning of § 355(g)(3)) in Controlled 2 or Distributing 2; (2) if any person holds a 50% or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction; or (3) Controlled 2 and Distributing 2 will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows regarding Contribution 1:

1. Distributing 1 will have no gain or loss with regard to Contribution 1 (§§ 351(a) and 357(a)).
2. No gain or loss will be recognized by Sub 1 on the receipt of assets from Distributing 1 as a result of the exchange in Contribution 1 (§ 1032(a)).
3. The basis of the Sub 1 stock to be constructively received by Distributing 1 will be the same as the basis of the assets transferred by Distributing 1 to Sub 1, decreased by the sum of the liabilities assumed by Sub 1 (§ 358(a)(1) and 358(d)).
4. The basis of the assets received by Sub 1 will be the same as the basis of the assets in the hands of Distributing 1 immediately prior to Contribution 1 (§ 362(a)).
5. The holding period of the assets transferred to Sub 1 will include the holding period of such assets in the hands of Distributing 1 (§ 1223(2)).
6. The holding period of the stock to be constructively received by Distributing 1 will include the holding period of the assets that were transferred to Sub 1, provided that the assets were held as capital assets on the date of Contribution 1 (§ 1223(1)).

Based solely on the information submitted and the representations set forth above, we rule as follows regarding Contribution 2:

7. Distributing 2 will have no gain or loss with regard to Contribution 2 (§ 351(a)).
8. No gain or loss will be recognized by Distributing 1 on the receipt of assets from Distributing 2 as a result of the exchange in Contribution 2 (§ 1032(a)).
9. The basis of the Distributing 1 stock to be constructively received by Distributing 2 will be the same as the basis of the assets transferred by Distributing 2 to Distributing 1, decreased by the sum of the liabilities assumed by Distributing 1 (§§ 358(a)(1) and 358(d)).
10. The basis of the assets received by Distributing 1 will be the same as the basis of the assets in the hands of Distributing 2 immediately prior to Contribution 2 (§ 362(a)).
11. The holding period of the assets transferred to Distributing 1 will include the holding period of such assets in the hands of Distributing 2 (§ 1223(2)).
12. The holding period of the stock to be constructively received by Distributing 2 will include the holding period of the assets that were transferred to Distributing 1, provided that the assets were held as capital assets on the date of Contribution 2 (§ 1223(1)).

Based solely on the information submitted and the representations set forth above, we rule as follows regarding the Conversion, Contribution 3, and Internal Distribution 1:

13. The Conversion and Contribution 3, followed by Internal Distribution 1, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled 1 will each be “a party to a reorganization” within the meaning of § 368(b).

14. Distributing 1 will not recognize any gain or loss on the Conversion or Contribution 3 (§§ 361(a) and 357(a)).

15. Controlled 1 will not recognize any gain or loss on the Conversion or Contribution 3 (§ 1032(a)).

16. Distributing 1 will not recognize any gain or loss on Internal Distribution 1 (§ 361(c)).

17. Distributing 2 will not recognize any gain or loss (and will not include any amount in income) upon its receipt of the stock of Controlled 1 (§ 355(a)).

18. The holding period of the Controlled 1 stock received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which Internal Distribution 1 is made, provided that such Distributing 1 stock is held as a capital asset on the date of Internal Distribution 1 (§ 1223(1)).

19. Controlled 1's basis in each asset received from Distributing 1 will equal the basis of that asset in the hands of Distributing 1 immediately before the Conversion and Contribution 3 (§ 362(b)).

20. Controlled 1's holding period in each asset received from Distributing 1 in the Conversion and Contribution 3 will include the period during which Distributing 1 held that asset (§ 1223(2)).

21. As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled 1 will be made in accordance with § 1.312-10(a).

Based solely on the information submitted and the representations set forth above, we rule as follows regarding External Distribution 1:

22. Shareholders of Distributing 2 will not recognize any gain or loss (and will not include any amount in income) upon receipt of the stock of Controlled 1 pursuant to External Distribution 1 (§ 355(a)(1)).

23. Distributing 2 will not recognize any gain or loss on External Distribution 1 (§ 355(c)).

24. The aggregate basis of the Distributing 2, the Controlled 1, and the Controlled 2 stock (see Ruling 43 below) held by shareholders of Distributing 2 after External Distribution 1 (and External Distribution 2) will be the same as the basis in the Distributing 2 stock held by shareholders of Distributing 2 immediately prior to the distributions, allocated in proportion to the fair market values of the Distributing 2, the Controlled 1, and the Controlled 2 stock in accordance with § 1.358-2(a)(2).

25. The holding period of the Controlled 1 common stock received by shareholders of Distributing 2 will include the holding period of Distributing 2 common stock with respect to which the Controlled 1 common stock is distributed, provided that such Distributing 2 common stock is held as a capital asset on the date of External Distribution 1 (§ 1223(1)).

26. If cash in lieu of a fractional share of Controlled 1 common stock is received by a shareholder, the shareholder will have gain or loss measured by the difference between the basis of the fractional share, as allocated thereto as determined in ruling 24 above, and the amount of cash received (§ 1001(a)). Any gain or loss will be treated as capital gain or loss, provided such fractional share will be held as a capital asset on the date of External Distribution 1 (§§ 1221 and 1222).

27. As provided in § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled 1 will be made in accordance with § 1.312-10(b).

28. Payments made by Distributing 2 to Controlled 1 or by Controlled 1 to Distributing 2 that (i) have arisen or will arise for a taxable period ending on or before the date of External Distribution 1 or for a taxable period beginning before and ending after the date of External Distribution 1 and (ii) will not become fixed and ascertainable until after External Distribution 1, will be treated as occurring between Distributing 2 and Controlled 1 immediately before External Distribution 1. (Rev. Rul 83-73, 1983-1 C.B. 84; Arrowsmith v. Commissioner, 344 U.S. 6 (1952)).

Based solely on the information submitted and the representations set forth above, we rule as follows regarding Contribution 4 and Internal Distribution 2:

29. Contribution 4, followed by Internal Distribution 2, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled 2 will each be “a party to a reorganization” within the meaning of § 368(b).

30. Distributing 1 will not recognize any gain or loss on Contribution 4 (§§ 361(a) and 357(a)).

31. Controlled 2 will not recognize any gain or loss on Contribution 4 (§ 1032(a)).

32. Distributing 1 will not recognize any gain or loss on Internal Distribution 2 (§ 361(c)).

33. Distributing 2 will not recognize any gain or loss (and will not include any amount in income) upon its receipt of the stock of Controlled 2 (§ 355(a)).

34. The holding period of the Controlled 2 stock will include the holding period of the Distributing 1 stock with respect to which the distribution of the Controlled 2 stock is made, provided that the Distributing 1 stock is held as a capital asset on the date of Internal Distribution 2 (§ 1223(1)).

35. Controlled 2's basis in each asset received from Distributing 1 will equal the basis of that asset in the hands of Distributing 1 immediately before Contribution 4 (§ 362(b)).

36. Controlled 2's holding period in each asset received from Distributing 1 in Contribution 4 will include the period during which Distributing 1 held that asset (§ 1223(2)).

37. As provided in § 312(h), proper allocation of earnings and profits between Distributing 1 and Controlled 2 will be made in accordance with § 1.312-10(a).

Based solely on the information submitted and the representations set forth above, we rule as follows regarding Contribution 5 and External Distribution 2:

38. Contribution 5, followed by External Distribution 2, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be a "party to a reorganization" within the meaning of § 368(b).

39. Distributing 2 will not recognize any gain or loss on Contribution 5 (§§ 361(a) and 357(a)).

40. Controlled 2 will not recognize any gain or loss on Contribution 5 (§ 1032(a)).

41. Shareholders of Distributing 2 will not recognize any gain or loss (and will not include any amount in income) upon receipt of the stock of Controlled 2 pursuant to External Distribution 2 (§ 355(a)(1)).

42. Distributing 2 will not recognize any gain or loss on External Distribution 2 (§ 361(c)).

43. The aggregate basis of the Distributing 2, the Controlled 2, and the Controlled 1 stock (see Ruling 24 above) held by shareholders of Distributing 2 after External Distribution 2 will be the same as the basis in the Distributing 2 stock held by shareholders of Distributing 2 immediately prior to the distributions, allocated in

proportion to the fair market values of the Distributing 2, the Controlled 2 and the Controlled 1 stock in accordance with § 1.358-2(a)(2).

44. The holding period of the Controlled 2 common stock received by shareholders of Distributing 2 will include the holding period of Distributing 2 common stock with respect to which the Controlled 2 common stock is distributed, provided that such Distributing 2 common stock is held as a capital asset on the date of External Distribution 2 (§ 1223(1)).

45. Controlled 2's basis in each asset received from Distributing 2 will equal the basis of that asset in the hands of Distributing 2 immediately before Contribution 5 (§ 362(b)).

46. Controlled 2's holding period in each asset received from Distributing 2 in Contribution 5 will include the period during which Distributing 2 held that asset (§ 1223(2)).

47. If cash in lieu of a fractional share of Controlled 2 common stock is received by a shareholder, the shareholder will have gain or loss measured by the difference between the basis of the fractional share, as allocated thereto as determined in ruling 43 above, and the amount of cash received (§ 1001(a)). Any gain or loss will be treated as capital gain or loss, provided such fractional share will be held as a capital asset on the date of External Distribution 2 (§§ 1221 and 1222).

48. As provided in § 312(h), proper allocation of earnings and profits between Distributing 2 and Controlled 2 will be made in accordance with § 1.312-10(a).

49. Payments made by Distributing 2 to Controlled 2 or by Controlled 2 to Distributing 2 that (i) have arisen or will arise for a taxable period ending on or before the date of External Distribution 2 or for a taxable period beginning before and ending after the date of External Distribution 2 and (ii) will not become fixed and ascertainable until after External Distribution 2, will be treated as occurring between Distributing 2 and Controlled 2 immediately before External Distribution 2. (Rev. Rul. 83-73, 1983-1 C.B. 84; Arrowsmith v. Commissioner, 344 U.S. 6 (1952)).

Caveats

We express no opinion about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

In particular, we express no opinion regarding:

- (i) Whether the Internal Distributions and External Distributions will satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Internal Distributions and External Distributions are being used principally as a device for the distribution of the earnings and profits of Distributing 1, Distributing 2, Controlled 1, or Controlled 2 (see § 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether the Internal Distributions and External Distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest in Distributing 1, Distributing 2, Controlled 1, or Controlled 2 (see § 355(e) and § 1.355-7);
- (iv) Whether the liquidation of Sub 7 in step (ii) and of Sub 6 in step (xv) will qualify under §§ 332 and 337;
- (v) The tax consequences of the liquidation of the partnership in step (i);
- (vi) The tax consequences of any payments made in connection with the Transitional Services; and
- (vii) The tax consequences of the Fiscal Assurances.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your taxpayer's authorized representatives.

Sincerely,

Richard K. Passales

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Corporate)

cc: